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PLANNING

news bulletin

April, 1974

Montana Planning Division
Dept. of Intergovernmental Relations
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The Montana Subdivision and Platting Act may become all but self-enforcing in light of an opinion recently issued by Attorney General Robert L. Woodahl. In the ruling (Vol. 35, Op. No. 65) Woodahl confirmed the suspicions of the Division of Planning that any attempt to convey land in violation of the Act is null and void. The opinion declares that contracts for the sale of illegally subdivided land are void (and thus unenforceable by either the buyer or the seller) and that title to the land cannot be effectively transferred by deed. The invalidity of these contracts and deeds is of concern not only to the immediate parties to a sale, but also to lending institutions and title insurers who must rely on the integrity of land transactions in providing their services.

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In another opinion (Vol. 35, Op. No. 70) the Attorney General has also ruled that "member of the immediate family," as that term is used in the Act, means the spouse of the grantor and the children of the grantor by blood or adoption.

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Governor Judge has signed House Bill 1017, sponsored by Representative Arthur Sheldon of Libby, which amends the Montana Subdivision and Platting Act. Copies of the Subdivision Act as amended by HB 1017 may be obtained from the Division of Planning. A charge of 50 cents per copy is necessitated by high printing and mailing costs. Following is a section-by-section summary of the major changes contained in HB 1017 which will become effective July 1, 1974:

Section 11-3861. New subdivision (2.1) defines "Division of Land" to make it clear that once the identity of parcels of land has been established by properly filing a certificate of survey or subdivision plat, the parcels may be transferred without further reference to the Act. Under the definition, the sale of land on an installment "contract for deed" also constitutes a division of land for purposes of the act, although legal title has not yet passed to the purchaser. The sale, rent or lease of portions of buildings is excluded from the definition and from the application of the Act.

"Subdivision" has been redefined in subsection (12) as follows: "Subdivision means a division of land, or land so divided, which creates one or more parcels containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any re-

subdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles or mobile homes. A subdivision shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter."

"Occasional sale" is defined in new subsection (13) as one sale within a 12-month period. In Section 11-3862 such sales are exempted from public review requirements.

Section 11-3862. New subsection (3) authorizes the county clerk and recorder to refuse to record instruments purporting to convey land in violation of the Subdivision and Platting Act.

New subsection (6) exempts from public review, but not from surveying requirements, divisions of land created for the purpose of relocating common boundary lines, for gift or sale to members of the immediate family, for agricultural purposes where this use is assured by covenant, or by an "occasional sale" as defined in the Act.

New subsection (7) exempts subdivisions created by rent or lease from the surveying requirement of the Act.

New subsection (9) exempts from the application of Act the sale, rent or lease of portions of buildings.

Section 11-3863. New subsection (3.1) authorizes the governing body to waive all or portions of the environmental assessment when a proposed subdivision conforms to an adopted comprehensive plan or when the subdivision will contain fewer than ten (10) parcels and have an area of less than twenty (20) acres.

Subsection (5) which provides for summary review of minor subdivisions has been broadened to permit abbreviated review where "proper" access will be provided to all lots and where no land is to be dedicated to the public for parks.

Section 11-3864. Subsection (1) has been amended to relate the Act's park dedication requirement more closely to the anticipated density of subdivisions and to eliminate certain inequities inherent in the present requirement.

New subsection (6) authorizes waiver of the Act's dedication and cash donation requirement when sufficient park land is to be deeded to and maintained by a property owners' association.

New subsection (7) authorizes waiver of dedication where a subdivision is created by rent or lease if sufficient land within the subdivision is reserved for the recreational use of the residents thereof.

Section 11-3865. Subsection (1) has been amended to require the submission by the subdivider of proof of ownership of the land to be subdivided or proof of permission to subdivide by the record owner.

New subsection (2) authorizes the review by the county or city attorney of the abstract or certificate of title of the land to be subdivided.

Section 11-3867. Subsection (1) has been amended to make the review of final subdivision plats by an examining land surveyor discretionary with the governing body and to authorize the review of certificates of survey before filing.

Section 11-3870. Subsection (2) has been amended to validate all plats and certificates of survey filed prior to July 1, 1973 (the effective date of the Subdivision Act) and all plats and certificates filed in compliance with the Act on or after July 1, 1973.

New subsection (4) validates deeds and contracts executed prior to July 1, 1973, which might be void because of a failure to comply with the platting or subdivision requirements of former Chapter 6, Title 11, which was replaced by the Subdivision and Platting Act. This amendment was prompted by the recent Attorney General's Opinion that land transaction in violation of the Act are void. The principles relied upon this opinion would also apply to the rarely enforced former law with potentially catastrophic results. This amendment remedies this problem but does not validate transactions executed in violation of the new subdivision act.

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The Division of Planning is revising its model subdivision regulations in light of House Bill 1017 amendments to the Subdivision and Platting Act. Copies of these models will be available by April 24 and will be distributed at the joint meeting of the Montana Association of Professional Planners and the Montana Association of Planning Boards in Missoula.

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Effective July 1, 1974, planning board members may be reimbursed for transportation and other actual expenses incurred while attending planning board meetings. Under House Bill 624, amendments to section 11-3819, R.C.M. 1947, these payments are limited to state travel allowances of 12¢ per mile and up to \$16 per day on a formula basis. More information on computing travel expenses is available from the Division of Planning.

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Meagher County: Nancy Berg has been re-elected president of the county planning board; Bill Doggett also re-elected as vice-president.

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Frank Boucher has been elected President of the Deer Lodge County Planning Board. Boucher succeeds Glen Kennison, who has been president the past 14 months.

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"Guidelines for State Recognition of District Councils" have been sent to all local governments and interested organizations. In his covering memo, Governor Judge emphasized that the next step in organization of District Councils is up to local government.



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Local government officials in Districts 3, 4, 6, 7, 10, 11 and 12 have already held information meetings based on the proposed guidelines issued this fall. District 1 officials, at a meeting in Scobey, January 19, moved to appoint a 12-man committee to draw up by-laws for a "provisional" District Council. Mayor Tousley of Scobey will chair this committee which consists of Marvin Presser as secretary and ten members -- five people to represent each of the five counties and another five people representing the cities in each county.

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Any planning board member not yet receiving information on the Montana Association of Professional Planners and Montana Association of Planning Boards joint meeting in Missoula April 24, 25 and 26, may write the Division of Planning for full details.

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Anyone wishing to receive issues of the News Bulletin should contact Charleen Duke, Department of Intergovernmental Relations, Division of Planning, Capitol P.O., Helena, Montana 59601 (449-3757). We would also appreciate receiving membership changes on planning boards in order to keep the mailing list up to date.

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There are now 33 functioning county planning boards in the state, with seven more counties in the process of forming boards, leaving only 16 counties in the state that do not have county wide planning authority.

Publication of this Bulletin is financed in part by a federal grant from the U.S. Department of Housing and Urban Development.

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